

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 259 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SATISBHAI BHAICHAND PANCHAL

Versus

HEIR OF SHANTABEN MANEKLAL RAWAL

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Appearance:

MR SURESH M SHAH for Petitioner  
MR JF MEHTA for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
DELETED for Respondent No. 5, 6

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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/08/2000

ORAL JUDGEMENT

This is a Civil Revision Application under Sec.29(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 ( in short "the Act") filed by original defendant no.1 in H.R.P.Suit No. 2953 of 1982 which was pending before the learned Judge, Court No.10, Small Causes Court at Ahmedabad (who will be referred to

hereinafter as the learned Judge of the trial court for the sake of convenience) challenging the judgment Ex.19 dt. 6th November, 1998 rendered by the Learned Judge of the Appellate Bench of the Small Causes Court, Ahmedabad (who will be referred to hereinafter as the Learned Appellate Judges for the sake of convenience) in Civil Appeal No. 38 of 1995, whereby Appellate Bench was pleased to confirm the judgment Ex.80 dt. 13th February, 1995 rendered by the learned Judge of the trial court in H.R.P.Suit No. 2953 of 1982, by dismissing the appeal.

2. In this Civil Revision Application, the revision petitioner was a defendant no.1/1, whereas the revision opponent no.1 was the plaintiff and revision opponent nos. 2 to 6 were the defendant nos. 1/2 to 1/6 in the suit i.e. H.R.P.Suit No. 2953 of 1982. During pendency of this Civil Revision Application, by seeking permission of this court, the revision petitioner deleted the name of the revision opponent nos. 5 and 6. For the sake of convenience, the parties will be referred to as the plaintiff and defendants respectively at an appropriate stage.

3. The facts leading to this present Civil Revision Application, in a nutshell, are as follows :

Original plaintiff -Shantaben Maneklal Raval was an owner of the suit property bearing Survey No. 696, Municipal Census No. 305 situated in Shahpur Ward on Ghee Kanta Road, Ahmedabad. That suit property was let to the original defendant Bhaichandbhai Laxmidas Panchal for a monthly rent at the rate of Rs. 20/-. It is the case of the plaintiff that the Municipal Taxes and Electric consumption charges were to be borne by the defendant. It is the case of the plaintiff that the original defendant is a tenant in arrears of rent for more than six months and he has neglected to make the payment of such rent for more than six months. It is also the case of the plaintiff that the original defendant has acquired vacant possession of suitable residence. It is also the case of the plaintiff that the suit premises are reasonably and bonafide required by her and her family members. It is her case that grater hardship would be caused to her, if decree is refused, and therefore, first, plaintiff addressed a suit notice and terminated the tenancy of the defendant who was a tenant of the suit property, and thereafter, she filed H.R.P.Suit No. 2953 of 1982 for a decree of eviction and also to recover mesne profits at the rate of Rs.20/- per month. During the pendency of the suit, the original plaintiff Shantaben Maneklal Raval died, and therefore,

by seeking permission of the trial court, only her name as heir was brought on record by Prafulbala Markandrai Raval in place of the original plaintiff. The original defendant also died during the pendency of the suit, and therefore, after seeking permission of the court, the names of six heirs and legal representatives were brought on record in place of original defendant Bhaichandbhai Laxmidas Panchal, in the suit.

4. In that suit, the original defendant appeared and contested the suit by filing written statement Ex.7 wherein, he denied practically all the pleadings of the plaintiff pleaded in the plaint. It is his case, that the defendant had replied to the notice and remitted the amount due, by Money Order. It is his case that the plaintiff is not true in respect of acquisition of accommodation for suitable residence. He also denied the case of the plaintiff in respect of his personal bonafide requirement. He had taken a dispute with regard to standard rent. From the pleadings of both the parties, the learned Judge of the trial court framed issues at Ex.9. Both the parties led their respective oral as well as documentary evidence in support of their respective cases.

5. After hearing the arguments of the learned advocates for both the parties and after appreciating the evidence led by the parties, the learned Judge of the trial court was pleased to come to a conclusion that the defendant has acquired vacant possession of premises suitable for his residence. As per the Judgment of the trial court, issue with regard to non-payment of rent for more than six months was not pressed by the plaintiff. Simultaneously, the issue with regard to fixation of standard rent was also not pressed by the defendant. As observed by the learned Judge of the trial court, the original land-lady/plaintiff Shantaben Maneklal died during the pendency of the suit, and therefore, her requirement of suit property has been ended with end of her life, and therefore, the learned Judge of the trial court has not given any finding on Issue Nos. 4 and 5.

6. The learned Judge of the trial court granted a decree of eviction only on the ground that the defendant has acquired vacant possession of the premises for suitable residence. Ultimately by rendering his Judgment Ex.80 dt. 13th February, 1995 in H.R.P.Suit No. 2953 of 1982, the learned Judge of the trial court was pleased to decree the suit for eviction and physical possession of the suit premises in favour of the plaintiff, and the defendant was directed to hand over the possession of the

suit premises to the plaintiff on or before 15th March, 1995. The plaintiff was also made entitled to get mesne profits at the rate of Rs.20/per month and arrears of rent.

7. Being aggrieved against and dissatisfied with the said Judgment Ex.80 dt. 13th February, 1995 rendered by the learned Judge of the trial court in H.R.P.Suit No. 2953 of 1982, the original defendant no.1 Shantaben Maneklal Raval preferred an appeal bearing Civil Appeal No. 38 of 1995 in the Court of the learned Appellate Bench of the Small Causes Court at Ahmedabad. The learned Appellate Bench of the Small Causes Court, after hearing the arguments of the learned advocates of both the parties and after perusal of the record and proceedings of the case, and after appreciating the evidence on record by its Judgment Ex.19 dated 6/11/1998, confirmed the Judgment of the trial court by dismissing the said appeal with costs.

8. Being aggrieved against and dissatisfied with the said Judgment Ex.19 dt. 6th November, 1998 rendered in Civil Appeal No. 38 of 1995 of the Appellate Bench by the Small Causes Court, Ahmedabad, the original defendant no.1/appellant has preferred this present Civil Revision Application.

9. When this matter came up on Board for admission purpose, after hearing the learned advocates of both the parties, this court passed the following order on 24th July, 2000 which reads as under:-

" Heard Shri S.M.Shah, the L.A. for the Revision  
Petitioner and Shri Y.F.Mehta, the L.A. for the  
Revision Opponents.

Rule qua only the point with regard to  
maintainability of suit by Prafullaben Maneklal  
Raval in view of Will through which she claims  
her case to get a decree in her favour. Rule  
returnable on 2.8.2000".

10. To day, when this matter came up for final hearing, Shri S.M.Shah, the learned advocate for the revision petitioner submitted to this court that his client has instructed him to submit before the Court that they are prepared to give-up/ waive or abandon the issue with regard to maintainability of the suit by Prafullaben Maneklal Raval in view of the Will through which she claims her case to get a decree in her favour, provided heirs and legal representative of original defendant

Bhaichandbhai Laxmandas Panchal are given a reasonable time of two years to vacate the premises and hand over the possession of the suit premises to the plaintiff i.e. revision opponent no.1. To this submission, Shri Y.F.Mehta, the learned advocate for the revision opponents has fairly conceded that he has convinced his client and his client has instructed him to submit to this Court that a reasonable time of two years may be given to the heirs and legal representations of the original defendant to enable them to vacate and hand over the possession of the suit premises, to the plaintiff.

11. In view of the aforesaid development which took place during the course of arguments in this Civil Revision Application, now both the parties have requested this court not to decide issue in question on merits, and therefore, without going into merits or de-merits of the case with respect to issue involved in this matter, this Court deems fit, just and proper to partly allow this Civil Revision Application on the following terms :-

(1) Revision petitioner no.1 and revision opponent nos. 2 to 6 are ordered and directed to hand over the vacant and peaceful, physical possession of the suit premises to the revision opponent no.1 i.e. original plaintiff on or before 10th August, 2002, failing which the revision opponent no.1 original plaintiff will be at liberty to execute the decree of the trial court and get the possession of the suit premises in accordance with law.

(2) Revision petitioner no.1 and revision opponent nos. 2 to 6 all shall file undertaking with usual terms and conditions supported by affidavit to this court within four weeks from the date of this order.

With the aforesaid observations and directions, this Civil Revision Application is disposed of as partly allowed. Rule is made absolute to the aforesaid extent. Considering the facts and circumstances of the case, there shall be no order as to costs.

Date: 10/8/2000. (H.H.MEHTA,J.)  
ccshah